

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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|------------------------------------|---|-------------------------------|
| DAVID PETERSEN, |) | |
| |) | |
| Plaintiff, |) | 4:08CV3178 |
| |) | |
| v. |) | |
| |) | |
| MICHAEL J. ASTRUE, Commissioner of |) | MEMORANDUM AND ORDER ON |
| Social Security, |) | PLAINTIFF'S APPLICATIONS FOR |
| |) | ATTORNEY FEES UNDER THE EQUAL |
| Defendant. |) | ACCESS TO JUSTICE ACT |
| |) | |

On March 25, 2009, and April 15, 2009, the plaintiff filed applications for attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. (See filing 25.) The applications will be denied without prejudice.

As the defendant correctly explains in his response brief, (see filing 26), a party seeking fees pursuant to the EAJA must submit an application “within thirty days of final judgment in the action,” 28 U.S.C. § 2412(d)(1)(B). The term “final judgment” is defined as “a judgment that is final and not appealable.” 28 U.S.C. § 2412(d)(2)(G). In other words, a judgment becomes a “final judgment” after “the time for seeking appellate review has run.” Shalala v. Shaefer, 509 U.S. 292, 298 (1993). In this case, a judgment reversing the Commissioner’s decision was entered on February 23, 2009, and on March 9, 2009, the defendant filed a motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e). (See filings 21, 22.) According to the Federal Rules of Appellate Procedure, the defendant may file a notice of appeal within sixty days from the date of the order resolving his Rule 59(e) motion. See Fed. R. App. P. 4(a)(1)(B), 4(a)(4)(A)(iv). Because the time for the defendant to seek appellate review has not yet run, the February 23 judgment is not yet a “final judgment,” and the plaintiff’s March 25 and April 15 applications for attorney fees was filed prematurely.

IT IS ORDERED that the plaintiff's applications for attorney fees under the Equal Access to Justice Act, filing 25 and 28, are denied without prejudice.

Dated April 27, 2009.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge